



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161355

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 13, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits for October, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jackie Brion

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner is the stepmother of AN. AN's father lives with the Petitioner and is part of her FS group. Per court order AN's father has joint custody and primary placement of AN. At all times relevant herein, AN resided with her father and the Petitioner.

3. In or about September, 2014, AN's biological mother contacted the agency to add AN to her FS group. The agency removed AN from the Petitioner's FS group and added her to the biological mother's FS group. AN's biological mother received FS benefits for October 1, 2014 for AN.
4. On September 10, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$185/month effective October 1, 2014 for Petitioner and 5 others in her household. The notice also informed the Petitioner that she would not receive benefits for AN effective October 1, 2014 because AN was receiving FS benefits as part of another case.
5. On October 1, 2014, the Petitioner contacted the agency to inquire why AN had been removed from her case. The Petitioner provided verification that AN's father is her primary caretaker.
6. On October 10, 2014, the agency issued a Notice of Decision informing the Petitioner that she would receive FS benefits of \$417/month effective November 1, 2014 for herself and 6 others in the household including AN.
7. On October 16, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A food unit, for purposes of determining FS eligibility, is defined as one or more persons who live in the same household and purchase and prepare food together for home consumption. FoodShare Handbook (FSH), § 3.3.1.1.

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. The FSH describes the method for determining which household a child resides in when there is a joint custody arrangement:

If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?

8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision . . .

FSH § 3.2.1.1.

In this case, AN was removed from the Petitioner's and her father's FS group despite a court order that establishes her father as the primary caretaker. In addition, Petitioner and AN's father were the first to apply for FS benefits for AN. The agency clearly erred in removing AN from the Petitioner's FS group. I recognize that an individual can only receive benefits in one FS group but AN's mother provided false information and the agency erred in not doing the proper analysis regarding whose FS group AN should be in. If the agency wants to correct the error, it should be seeking recoupment from AN's mother, not withholding benefits to the Petitioner who was rightfully entitled to them.

CONCLUSIONS OF LAW

The agency erred in removing AN from the Petitioner's FS group for October, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the Petitioner's FS benefits for October, 2014 including AN in the household and FS group. The agency shall issue a new Notice of Decision to the Petitioner regarding October, 2014 FS benefits with a new right of appeal if the Petitioner disagrees with that determination. The agency shall also issue any supplemental FS benefits to the Petitioner that are owed to the Petitioner. All of these actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of December, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 5, 2014.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability